

to the Commissioner (see §§ 1.302 and 1.304); and

(b) in the Court, file a copy of the notice of appeal and pay the fee, as provided for in the rules of the Court. A third party requester is deemed not to have participated as a party to an appeal by the patent owner, and thereby not subject to § 1.909, unless within twenty days after the patent owner has filed notice of appeal pursuant to § 1.983(a), the third party requester files notice with the Commissioner electing to participate.

Proceedings Involving Same Patent as in Reexamination

§ 1.985 Notification of prior or concurrent proceedings.

Any person at any time may file a paper in a reexamination proceeding notifying the Office of a prior or concurrent proceeding in which the same patent is or was involved, such as interferences, reissues, reexaminations, or litigation and the results of such proceedings. Such paper must be limited to merely providing notice of the other proceeding without discussion of issues of the current reexamination proceeding.

§ 1.987 Stay of concurrent proceeding.

If a patent in the process of reexamination is or becomes involved in litigation or a reissue application for the patent is filed or pending, the Commissioner shall determine whether or not to stay the reexamination or reissue proceeding.

§ 1.989 Merger of concurrent reexamination proceedings.

(a) If reexamination is ordered while a prior reexamination proceeding is pending for the same patent, the reexamination proceedings will be merged and result in the issuance of a single certificate under § 1.997.

(b) A reexamination proceeding filed under § 1.915 which is merged with a reexamination proceeding filed under § 1.510 will result in the merged proceeding being governed by §§ 1.901–1.997.

§ 1.991 Merger of concurrent reissue application and reexamination proceeding.

If a reissue application and a reexamination proceeding on which an order pursuant to § 1.931 has been mailed are pending on a patent, a decision may be made to merge the two proceedings or to stay one of the two proceedings. Where merger is a reissue application and a reexamination proceeding is ordered, the merged examination will be conducted in accordance with §§ 1.171 through 1.179

and the patent owner will be required to place and maintain the same claims in the reissue application and the reexamination proceeding during the pendency of the merged proceeding. In a merged proceeding, participation by the third party requester shall be limited to issues within the scope of reexamination. The examiner's actions and any responses by the patent owner or third party requester in a merged proceeding will apply to both the reissue application and the reexamination proceeding and be physically entered into both files. Any reexamination proceeding merged with a reissue application shall be terminated by the grant of the reissue patent.

§ 1.993 Stay of concurrent interference and reexamination proceeding.

If a patent in the process of reexamination is or becomes involved in an interference, the Commissioner may stay reexamination or the interference. The Commissioner will not consider a request to stay an interference unless a motion (§ 1.635) to stay the interference has been presented to and denied by an administrative patent judge and the request is filed within ten (10) days of a decision by an administrative patent judge denying the motion for a stay or such other time as the administrative patent judge may set.

§ 1.995 Third party requester's participation rights preserved in merged proceeding.

When a third party requester is involved in one or more proceedings including a reexamination proceeding, the merger of such proceedings will be accomplished so as to preserve the third party requester's right to participate to the extent specifically provided for in these regulations. In merged proceedings involving different requesters, any paper filed by one party in the merged proceeding shall be served on all other parties of the merged proceeding.

Certificate

§ 1.997 Issuance of reexamination certificate after reexamination proceedings.

(a) Upon the conclusion of a reexamination proceeding, the Commissioner will issue a certificate in accordance with 35 U.S.C. 307 setting forth the results of the reexamination proceeding and the content of the patent following the reexamination proceeding.

(b) A certificate will be issued in each patent in which a reexamination proceeding has been ordered under § 1.931. Any statutory disclaimer filed by the patent owner will be made part of the certificate.

(c) The certificate will be mailed on the day of its date to the patent owner at the address as provided for in § 1.33(c). A copy of the certificate will also be mailed to the requester of the reexamination proceeding.

(d) If a certificate has been issued which cancels all of the claims of the patent, no further Office proceedings will be conducted with regard to that patent or any reissue applications or reexamination requests relating thereto.

(e) If the reexamination proceeding is terminated by the grant of a reissued patent as provided in § 1.965(d), the reissued patent will constitute the reexamination certificate required by this section and 35 U.S.C. 307.

(f) A notice of the issuance of each certificate under this section will be published in the Official Gazette on its date of issuance.

Dated: August 1, 1995.

Bruce A. Lehman,

*Assistant Secretary of Commerce and
Commissioner of Patents and Trademarks.*
[FR Doc. 95–19488 Filed 8–10–95; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–5269–7]

National Oil and Hazardous Substance Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete Ossineke Groundwater Contamination Site.

SUMMARY: The Environmental Protection Agency (EPA) announces its intent to delete the Ossineke Groundwater Contamination Site (the "OGC Site"), from the National Priorities List (NPL), 40 CFR part 300, appendix B, and requests public comment on this action. The NPL constitutes appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. This action to delete the OGC Site from the NPL is proposed because EPA's Office of Superfund (OSF) and the State of Michigan Department of Natural Resources (MDNR) have determined that using the Hazardous Substance Superfund (the "Fund") to fund further

remedial action under CERCLA at this Site is not appropriate. Either OUST or the State of Michigan will undertake any necessary corrective actions at the OGC Site under the authorities of the Michigan Leaking Underground Storage Tank (LUST) Statute, the Michigan Environmental Response Act (MERA), or Subtitle I of the Resource Conservation and Recovery Act (RCRA). MDNR evaluates and responds to sites according to a State specific priority ranking scheme. The OGC site will be evaluated and addressed consistent with this scheme.

DATES: Comments concerning the OGC Site may be submitted on or before September 11, 1995.

ADDRESSES: Comments to be considered by EPA in making this decision should be mailed to: Linda Nachowicz: Remedial Project Manager; Waste Management Division; Remedial Response Branch WI/MI; U.S. Environmental Protection Agency, Region 5; 77 West Jackson Boulevard; Chicago, IL 60604-3507.

FOR FURTHER INFORMATION CONTACT: Linda Nachowicz: Remedial Project Manager; Waste Management Division; Remedial Response Branch WI/MI; U.S. Environmental Protection Agency, Region 5; 77 West Jackson Boulevard; Chicago, IL 60604-3507; telephone (312) 886-6337.

SUPPLEMENTARY INFORMATION: Comprehensive information on the OGC Site is available for public review in the deletion docket that EPA Region 5 has prepared. The deletion docket contains the documents and information EPA reviewed in the decision to propose to delete the OGC Site from the NPL. The docket is available for public review during normal business hours at the EPA Region 5 docket room at the above address and at the NBD Alpena Bank; 11686 U.S. Highway 23 South; Ossineke, MI 49766.

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I. Introduction

The Environmental Protection Agency (EPA) announces its intent to delete the Ossineke Groundwater Contamination Site in Ossineke, Michigan (the "OGC Site"), from the National Priorities List (NPL), which constitutes appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR Part 300 (NCP), and requests comments on this action.

The EPA identifies sites which may present a significant risk to public health, welfare, or the environment, and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial action financed by the Hazardous Substance Superfund Response Trust Fund (the "Fund") or by responsible parties. Pursuant to the NCP at 40 CFR 300.425(e)(3), any site deleted from the NPL remains eligible for future Fund-financed response actions and for re-listing on the NPL, if conditions at the site ever warrant such action.

The EPA will accept comments concerning the proposal to delete the OGC Site from the NPL for thirty (30) calendar days after publication of this notice in the **Federal Register**.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the history of the OGC Site and explains how the OGC Site meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with the NCP at 40 CFR 300.425(e), sites may be deleted from the NPL where no further response under CERCLA is appropriate. In making this determination, EPA considers, in consultation with the State, whether any of the following criteria have been met: Whether responsible or other parties have implemented all appropriate and required response action; whether all appropriate Fund-financed responses under CERCLA have been implemented and EPA, in consultation with the State, has determined that no further cleanup by responsible parties is appropriate; or whether the release of hazardous substances poses no significant threat to public health or the environment, and, therefore, taking of remedial measures is not appropriate. (55 FR 8813, March 8, 1990.)

In the past, EPA has indicated that in some cases it may be appropriate to delete from the NPL those sites that meet all the criteria for deferral to RCRA, and, in addition, present circumstances that otherwise make deletion appropriate. See 51 FR 21059 (June 10, 1986); 53 FR 30008 (August 9, 1988). On August 9, 1988 (53 FR 30009), EPA indicated that while it would not systematically review sites already on the NPL to see whether they are eligible for deletion on this basis, it would consider requests for deletion that showed the circumstances to be appropriate.

The Underground Storage Tanks (UST) Program was established by Subtitle I of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA) and as amended by SARA. The UST Program has authority to address releases of petroleum from leaking underground storage tanks.

Deletion under this approach does not indicate that the cleanup has been completed, but rather that no further Superfund involvement is appropriate, and that EPA has determined that any necessary corrective action will be considered under another statutory authority, RCRA Subtitle I.

As discussed further below, the EPA has determined that the above criteria for deletion of the OGC Site from the NPL have been fulfilled. Any necessary corrective action at the OGC Site will be considered under either the EPA's UST Program or the Michigan Department of Natural Resources, pursuant to RCRA Subtitle I and the Michigan Leaking Underground Storage Tank statute. No further Fund-financed action, pursuant to CERCLA, at the OGC Site is deemed appropriate at this time.

III. Deletion Procedures

The NCP at 40 CFR 300.425(e) specifies the procedures to be followed in deleting sites from the NPL. Prior to proposing deletion from the NPL and prior to developing the Notice of Intent to Delete, EPA must consult with the State. The EPA, in consultation with the State, must decide whether the criteria for deletion of § 300.425(e) have been met.

Section 300.425(e) also directs that the Notice of Intent to Delete be published in the **Federal Register**, and that a concurrent notice be published in a local newspaper of general circulation near the site. By publication of this **Federal Register** notice for the OGC Site, EPA is extending to the public a period of thirty (30) calendar days after publication to comment on the proposed deletion. Information supporting the EPA's intent to delete the OGC Site is contained in the information repository and deletion docket, and is available to the public for inspection.

EPA will accept and evaluate public comments before making a final decision, and will address all significant comments made and significant data provided in a Responsiveness Summary. The Responsiveness Summary will be placed in the deletion docket. If, after consideration of these comments, EPA decides to proceed with the deletion, EPA will publish in the **Federal**

Register a final notice announcing the deletion.

The following procedures are being used for the intended deletion of the OGC Site:

The State of Michigan has concurred with this decision to address contamination under RCRA, Subtitle I authority.

Concurrent with this national Notice of Intent to Delete, a local notice will be published in the local newspaper and will be distributed to appropriate federal, state and local officials and other interested parties. This local notice will specify a 30 day comment period.

The Region has made all relevant documents available in the Regional Office and local site information repository.

IV. Basis for the Intended Deletion of the OGC Site

The Ossineke Groundwater Contamination Site is located in the southern portion of the Village of Ossineke near the intersection of U.S. Route 23 and Nicholson Hill Road in Alpena County, Michigan. The Site lies approximately 1.8 miles southwest of Lake Huron.

In June 1977, the Alpena County Health Department (ACHD) began receiving complaints from Ossineke residents about odors in their drinking water. Sampling confirmed the presence of hydrocarbons. The ACHD advised residents using the upper aquifer to stop using their wells as a drinking water source. On April 13, 1982, the Michigan State Police responded to a report of gas

odors in the basements of several businesses. These reports were verified and it was discovered that a snow plow had hit a self-service gasoline pump during the winter, causing the release of an unknown amount of gasoline.

The Site was evaluated by U.S. EPA's OSF in July 1982 and placed on the National Priorities List (NPL) in September 1983. In June 1986, residential wells affected by contamination were replaced by the Michigan Department of Public Health.

The final Remedial Investigation (RI) Report was issued on January 31, 1991. Field work for the RI began in May 1989 and was completed in March 1990. The results of the RI show that contaminants of concern at the OGC Site are petroleum-related and were likely caused by petroleum or petroleum product releases from leaking USTs in the area. A CERCLA Feasibility Study was not conducted for the OGC Site.

On June 28, 1991, a Record of Decision for the OGC Site was signed by the Regional Administrator of EPA Region 5. The ROD selected the remedy of no further action.

On the basis of the RI and ROD, the OGC Site was referred to the EPA UST Program established by Subtitle I of the Resource Conservation and Recovery Act (RCRA). The State of Michigan also has regulatory authority and jurisdiction to address releases from petroleum USTs, under Michigan's Leaking Underground Storage Tank (LUST) statute enacted in 1988, and has been delegated the authority to address this facility under its Cooperative Agreement under Subtitle I of RCRA. The State of

Michigan, through the Michigan Department of Natural Resources, concurs with the ROD for the OGC Site.

Responsibility for the determining whether future clean-up of the OGC Site shall be taken is with the State of Michigan DNR under a cooperative agreement and the EPA's UST Program. Any petroleum-related contamination currently at the OGC Site as a result of leaking USTs may be addressed, if appropriate, either by the EPA's UST Program or by the Michigan Department of Natural Resources. Such actions may include corrective actions and/or enforcement actions under the authority of RCRA Subtitle I, the Michigan LUST statute, or the Michigan Environmental Response Act (MERA) (1982 P.A. 307, as amended).

Based on the above circumstances, EPA has concluded that in this case deletion from the NPL of the OGC Site is appropriate. In this case, EPA can make a finding that all appropriate Fund-financed response under CERCLA has been implemented and that no further CERCLA response action by responsible parties is appropriate. Deletion under this approach does not indicate that the clean-up has been completed, but rather that no further Superfund involvement is necessary at the OGC Site, and that EPA expects any necessary response actions to be completed under RCRA, Subtitle I.

Dated: December 8, 1994.

Valdas V. Adamkus,

Regional Administrator, U.S. EPA Region 5.

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